



Written by [Bob Adelman](#) on March 25, 2010

ObamaCare: The Final Nail, or the Last Straw?

In responding to House Speaker Nancy Pelosi's (D-Calif.) incredulous "Are you serious?" about the constitutionality of Obamacare, many have written persuasively that the healthcare law is in fact unconstitutional.

Michelle Morin [in her blog](#) reminded her readers that Article 1, Section 8 limits the federal government to specific and enumerated powers, with all other unenumerated powers being left to the states or to the people. Michael Boldin of the [Tenth Amendment Center](#) analyzed the purpose of the Constitution and the Bill of Rights as limitations and restrictions on the power of the federal government. He concludes his analysis with these words:



No matter what side you are on, you don't want a government than can do whatever it wants whenever it wants because it becomes dangerous. This is what the Founding Fathers and the entire founding generation had to fight against — a king who could set his own rules and make them up as he goes. Rules may not be a wonderful thing, but when you allow government to do whatever it wants, you are guaranteeing tyranny.

Writer Joe Wolverton excoriated "Johnny Come Latelys" [here](#) when he reported that several senators admitted, after the fact, that healthcare reform was unconstitutional, and that nowhere in that hallowed document could be found any powers to allow it. Elsewhere, he reminds his readers that "there are those yet willing to defend the Tenth Amendment and defiantly assert its protections against the assumption by the national government of powers reserved by the Constitution to the individual states or to the people." In [another careful analysis](#), Jack Kenny points out that the Constitution is a "charter of limited, delegated powers" and that the [Commerce Clause](#) (the one Speaker Pelosi use to justify the healthcare bill's constitutionality), according to The Federalist No. 45, was "intended as a negative and preventive provision against injustice among the states themselves, rather than as a power to be used for the positive purposes of the General Government."

Kenny concludes that, by Pelosi's reasoning, "Congress shall have Power to do Whatever seemeth Good to the Congress to do." Wolverton [noted in another article](#) that the specific, limited powers granted to the federal government must be looked at through the further limitations of the 10th Amendment, and "When placed side by side as complementary lenses through which all bills and other proposals of the national government must be viewed, these two sections of the Constitution clarify whether or not acts of the Congress conform to the powers delegated to it by our founding document."

But there are some who say that, despite the accuracy, truthfulness and soundness of these arguments, the battle for freedom from tyranny is lost. In variations on a theme, these hold that "it's impossible to row the canoe back up over the falls," that "it's impossible to put the genie back into the bottle," and



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other glib clichés that reflect despair over the apparent rush to total government control over every aspect of a citizen's personal and intimate life. Chuck Baldwin, [in his latest newsletter](#), says

The decision by Congress to socialize medicine in the US ranks among the most draconian, most egregious, most horrific actions ever taken by the central government in Washington, D.C. This bill rocks the principles of liberty and constitutional government to the core. It changes fundamental foundations; it repudiates historical principle. Oh! The same flag may fly on our flagpoles, the same monuments may grace our landscape, and the same National Anthem may be sung during our public ceremonies, but it is not the same America. The Congress of the United States has now officially turned America into a socialist state.

On March 23, 2010, President Barack Obama signed the health care bill into law, and as such, this date — along with March 21 — joins a list of dates that have each inflicted unconstitutional, socialistic, and sometimes even tyrannical action against the States United and have, therefore, contributed to the destruction of a free America.

In late February, [Gary North](#) told his readers that he is “great fan of Garet Garrett,” and then quoted the following from Garrett's 1938 essay, “The Revolution Was”:

There are those who still think they are holding the pass against a revolution that may be coming up the road. But they are gazing in the wrong direction. The revolution is behind them. It went by in the Night of Depression, singing songs to freedom.

It is worth noting that both North and Baldwin continue to write, analyze and promote their views under freedoms guaranteed in the First Amendment which is still in place.

Others are taking a more activist role. Rob Natelson, in his [recent article](#) “Had Enough?” says that while there is no one single “good” response to the unconstitutional healthcare law, “there are [several] responses that, while difficult, offer real hope of success [in pushing back]:

- Widespread court challenges, on every colorable constitutional, legal, and technical ground we can think of. State governments can take a leading role in this, by virtue of the fact that state governments are more likely than individuals to have standing in federal court. State governments and officials also have much to lose if the feds are allowed to complete their health care takeover.
- Health care provider non-compliance: To the extent they can, physicians and other providers should opt out of the system. Their choices include partial or complete refusal to participate in Medicare, Medicaid, and other government programs; refusal to take any but direct-payment patients; reduced work hours; and even career change and early retirement. Students considering a medical career should now reconsider. Given the ominous nature of the federal health care coup d'état, my guess is that a lot of this will happen anyway.
- State constitutional amendments. One excellent idea is the amendment proposed in many states guaranteeing that the state will never participate in any system that denies patients and physicians the right to their own health-care decisions.
- Civil disobedience. This should include state non-compliance with federal health-care mandates and peaceful resistance by providers and citizens at every level. The model here should be the Civil Rights movement of the 1960s.
- Redoubling efforts for the 2010 elections. The people responsible for this bill should be cleaned out of Congress - all of them. In addition, we need to gear up for 2012 and ensure that state lawmakers



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elected in 2010 fully understand their constitutional obligations.

Lo and behold, Attorneys General from 13 states have [already filed suits](#) against the federal government, claiming that the healthcare law is unconstitutional. And the lawsuits are following the same conclusions drawn by the authors cited previously, namely, that the law violates the 10th Amendment. Texas Attorney General Greg Abbott said: “No public policy goal — no matter how important or well-intentioned — can be allowed to trample the protections and rights guaranteed by our Constitution. South Carolina’s Attorney General, Henry McMaster, agreed: “A legal challenge by the states appears to be the only hope of protecting the American people from this unprecedented attack on our system of government.” And Florida Attorney General Bill McCollum said: “This is not lawful. It may have passed Congress, but there are three branches of government.” McCollum intends to pursue the issue all the way to the Supreme Court, if necessary.

Naturally, there were [denials](#) from the usual suspects that such a lawsuit would have no impact on the law. Stanford University Law School professor David Freeman Engstrom, said “The lawsuit probably doesn’t have legs both as a matter of precedent and as a matter of common sense.” Sanford Levinson, a professor at the University of Texas Law School, remarked, “The argument about constitutionality is, if not frivolous, close to it. You’d have to imagine that the five conservative Republicans on the Supreme Court will be willing to invalidate the most important piece of social legislation in 50 years on the basis of a highly tendentious and controversial reading of the Constitution.”

In response, South Dakota Attorney General Marty Jackley said, “This isn’t about attorneys general trying to break into the realm of what needs to happen with health care reform. This is attorneys general saying you went too far with unfunded federal mandates. You exceeded your power under the Constitution.”

Wayne Laugesen, an editor of the Colorado Springs *Gazette*, says the health care law “is unlikely to pass constitutional muster in court. Voters and politicians in states, including Colorado, will do everything imaginable to stop it. After health care reform fails to materialize, it may go down in history as a prime example of how checks and balances work against absolute power and corruption in the United States.”

[Phyllis Schlafly](#), writing for *Investors Business Daily*, said, “The American people have figured out [that] the issue is not health care, it’s freedom. Opposition to this Obamanation is manifesting itself not only in Tea Parties, town hall meetings...phone calls...and spontaneous demonstrations [but] also...in state capitols all over the country.”

She then listed the states that have already passed “Freedom of Choice in Health Care” acts, including Virginia, Idaho, Arizona, Oklahoma, and Utah. Similar measures are pending in more than 30 other states. Schlafly says that these states are finally “flexing their state sovereignty muscles” in other areas as well. Montana, South Dakota, Wyoming, Tennessee, and Utah have already enacted laws declaring that federal regulation of guns is invalid if a weapon is made and used only within the state. And Texas “opted out of Obama’s pot of \$4.35 billion in ‘Race to the Top’ grants to states that [must also] accept federal control of public school curriculum and standards. She concludes that “the American people — and the various states — are not going to accept Obama’s transformation.”

There are already cries of “Repeal!” and “I’ll remember in November!” by disgruntled voters. Which is just as well, because as *Investors Business Daily* [said](#): “The courts hold some hope, but in the end the only way to stop this promised fundamental transformation of America will be at the ballot box starting



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in November.”

Rep. Ron Paul (R-Texas) was guardedly optimistic about the legal efforts being undertaken by more than 30 states to have the law declared unconstitutional: “If the courts stand by their oaths, they [we] will win. Protecting the right to life, liberty and the pursuit of happiness should be the court’s responsibility. Citizens have a responsibility over their own lives, but they also have the liberty to choose how they will live and protect their lives. Healthcare choices are a part of [that] liberty...”

Further along in his article, Gary North (mentioned above) said, “We lost our liberties by a stealth revolution. We will gain them back the same way.”

For those seeking clarity on which camp to join, either the ObamaCare is the “final nail in the coffin of liberty” crowd, or the ObamaCare is “the last straw and I’m finally going to get involved” crowd, James Russell Lowell wrote these words in 1844, entitled “The Present Crisis”:

Once to every man and nation comes the moment to decide,
In the strife of Truth with Falsehood, for the good or evil side;
Some great cause, God’s new Messiah, offering each the bloom or blight,
Parts the goats upon the left hand, and the sheep upon the right,
And the choice goes by forever ‘twixt that darkness and that light.
Hast thou chosen, O my people, on whose party thou shalt stand,
Ere the Doom from its worn sandals shakes the dust against our land?
Though the cause of Evil prosper, yet ‘tis Truth alone is strong,
And, albeit she wander outcast now, I see around her throng
Troops of beautiful, tall angels, to enshield her from all wrong.
Backward look across the ages and the beacon-moments see,
That, like peaks of some sunk continent, jut through Oblivion’s sea;
Not an ear in court or market for the low, foreboding cry
Of those Crises, God’s stern winnowers, from whose feet earth’s chaff must fly;
Never shows the choice momentous till the judgment hath passed by.
Careless seems the great Avenger; history’s pages but record
One death-grapple in the darkness ‘twixt old systems and the Word;
Truth forever on the scaffold, Wrong forever on the throne,—
Yet that scaffold sways the future, and, behind the dim unknown,
Standeth God within the shadow, keeping watch above his own.

Take heart then, and do not despair. The fight for freedom never ends. Indeed, it has just begun...

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